

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 21396 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**
- 2 To be referred to the Reporter or not ? **-No.**
- 3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**
- 5 Whether it is to be circulated to the civil judge ? **-No.**

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BHARATSINH JUGARSINH VAGHELA - Petitioner(s)**Versus****STATE OF GUJARAT THR' HOME SECRETARY (SPL.) & 2 - Respondent(s)**

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Appearance :

MS SUBHADRA G PATEL for Petitioner(s) : 1,
 RULE SERVED BY DS for Respondent(s) : 1 - 2.
 GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 24/11/2005****ORAL JUDGMENT**

1.Bharatsinh Jugarsinh Vaghela, petitioner has filed this petition of habeas corpus with a prayer that this Court may be pleased to quash and set aside the order of

detention dated 13/9/2005 passed by the Police Commissioner, Ahmedabad, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. Petition has been filed on 14/10/2005 and matter was placed before the Court on 21/10/2005. On that day, my brother Mr. Justice A.S. Dave has issued rule, which is returnable. Therefore, the matter has come up for final hearing in this Court.

2. Ms. S.G. Patel, learned advocate for the petitioner has invited my attention to the order dated 13/9/2005 passed by the Police Commissioner, Ahmedabad, detaining authority, under the provisions of Section 3(2) of the PASA Act. Petitioner has also been detained in jail at Junagadh by the same order. The detaining authority has supplied the grounds of detention dated 13/9/2005 to the petitioner. The said grounds reveals that petitioner has committed four offences which are as under:

1. Offence registered at East Police Station in connection with CR No. 696 of 2005 dated 26/4/2005 under Section 66(B), 65(A)(E), 81, 83 and 116(1)(B) of the Prohibition Act. It is alleged that petitioner was

storing about 104 bottles of country liquor valued at Rs.5,200/- .

2. Offence registered at East Police Station in connection with CR No.951 of 2005 dated 16/6/2005 under Section 66(B), 65(A)(E), 81, 83 and 116(1)(B) of the Prohibition Act. It is alleged that petitioner was storing about 20 bottles of bear valued at Rs.2,000/-, one bottle 5B 99 Extra Dryjon valued at Rs.200/- and cash of Rs.8,000/- .

3. Offence registered at East Police Station in connection with CR No.957 of 2005 dated 16/6/2005 under Section 66(B), 65(A)(E), 81, and 116(1)(B) of the Prohibition Act. It is alleged that petitioner was storing about 1896 bottles of country liquor valued at Rs.5,78,832/- .

4. Offence registered at Gandhinagar Police Station in connection with CR No.762 of 2005 dated 20/7/2005 under Section 66(B), 65(A)(E), 81 and 116(1)(B) of the Prohibition Act. It is alleged that petitioner was storing about 789 bottles of country liquor valued at Rs.94,680/- .

3.It was also alleged that petitioner is carrying on anti social activities as carrying on business of liquor and therefore, he is bootlegger under Section 2(b) of the PASA Act as the activities of the petitioner also affects the public health in this behalf.

4.On behalf of the petitioner, learned advocate for the petitioner has stated that in this matter, there is only breach of law and order situation but not breach of public order. For which she has relied upon the judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491, Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana decided on 22/8/2000 and another judgment of this Court (Coram:K.M.Mehta, J.) on 15/11/2005 in Special Civil Application No.20420 of 2005.

5.The On behalf of the respondents, Mr.Gohil, learned APP appears. Government has filed affidavit of K.R.Kaushik dated 16/11/2005. In the said affidavit, it is stated that the authority has considered relevant materials and after going through the same, the detention order

has been passed.

6.I have considered the facts and circumstances of the case in view of the, submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

7.In view of the same, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Bharatsinh Jugarsinh Vaghela, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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